

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GAVEN PICCIANO,

Plaintiff,

v.

CLARK COUNTY, CLARK COUNTY JAIL,
WELLPATH, LLC, and NAPHCARE, INC.

Defendants.

NO. 3:20-cv-06106-RAJ

DEFENDANT NAPHCARE, INC. ANSWER
TO PLAINTIFF'S SECOND AMENDED
COMPLAINT

Defendant NaphCare, Inc. ("Defendant") answers Plaintiff's Second Amended Complaint as follows:

Plaintiff's Complaint Introduction contains multiple averments and legal conclusions, which do not require an answer. To the extent an answer is required, Defendant denies any allegations of fault or liability contained in this section of Plaintiff's Complaint. Defendant further denies that Plaintiff is entitled to the relief sought as a result of any alleged fault or liability.

DEFENDANT NAPHCARE, INC. ANSWER TO
PLAINTIFF'S AMENDED COMPLAINT- 1
(CASE NO. 3:20-cv-06106-RAJ)

FAIN ANDERSON VANDERHOEF
ROSENDAHL O'HALLORAN SPILLANE, PLLC
701 Fifth Avenue, Suite 4750
Seattle, WA 98104
p. 206-749-0094 • f. 206-749-0194

I. PARTIES

1. Defendant lacks knowledge or information sufficient to form a belief about the truth of this allegation. Therefore, Plaintiff is left to his proof. Defendant denies any allegation of fault or liability.

2. This paragraph is directed to a different defendant. This Defendant lacks the requisite knowledge or information to admit the allegations in this paragraph. Therefore, they are denied leaving Plaintiff to his proof.

3. This paragraph is directed to a different defendant. This Defendant lacks the requisite knowledge or information to admit the allegations in this paragraph. Therefore, they are denied leaving Plaintiff to his proof.

4. This paragraph is directed to a different defendant. This Defendant lacks the requisite knowledge or information to admit the allegations in this paragraph. Therefore, they are denied leaving Plaintiff to his proof.

5. Defendant admits that NaphCare, Inc. (“NaphCare”) is a private, for-profit correctional healthcare corporation, incorporated in Alabama. Defendant admits that, in the time frame at issue, NaphCare was doing business in Washington State. Defendant denies the remainder of this paragraph.

Defendant further asserts that Paragraph 5 contains legal conclusions, argument, and innuendo about a case in the Eastern District of Virginia that is completely unrelated to this case. The language contained in paragraph 5 is an incomplete representation of that case, argumentative, highly prejudicial, and meant solely to inflame.

6. This paragraph is a legal conclusion. Denied as to this Defendant.

II. JURISDICTION AND VENUE

DEFENDANT NAPHCARE, INC. ANSWER TO
PLAINTIFF’S AMENDED COMPLAINT- 2
(CASE NO. 3:20-cv-06106-RAJ)

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1 17. Defendant lacks knowledge or information sufficient to form a belief about the truth
2 of this allegation. Furthermore, the allegations in this paragraph are argumentative medical
3 and/or legal conclusions, and, no response is required. To the extent a response is required, they
4 are denied. Plaintiff is left to his proof. Defendant denies all allegations of fault or liability.

5 18. This paragraph is directed at a different Defendant. Plaintiff is therefore left to his
6 proof. This Defendant denies all allegations of fault or liability.

7 19. This paragraph is directed at a different Defendant. Plaintiff is therefore left to his
8 proof. This Defendant denies all allegations of fault or liability.

9 20. This paragraph is directed at a different Defendant. Plaintiff is therefore left to his
10 proof. This Defendant denies all allegations of fault or liability.

11 21. Admit insofar as the contract between NaphCare, Inc. and Clark County became
12 effective on February 1, 2020. Insofar as paragraph asserts a legal conclusion no response is
13 required. Defendant denies all allegations of fault or liability.

14 22. This paragraph contains factual and legal averments to which no response is
15 required. To the extent a response is required, denied. Defendant denies all allegations of fault
16 or liability.

17 **Mr. Picciano's Detention**

18 **January 30-31, 2020**

19 23. Defendant lacks knowledge or information sufficient to form a belief about the
20 truth of this allegation. Therefore, Plaintiff is left to his proof. Defendant denies any
21 allegation of fault or liability.

22 24. Defendant lacks knowledge or information sufficient to form a belief about the
23 truth of this allegation. Therefore, Plaintiff is left to his proof. Defendant denies any
24 allegation of fault or liability.
25

1 33. Admit insofar as submitted request is dated February 1, 2020. Paragraph asserts
2 factual and medical conclusions to which no response is required. Defendant denies any
3 allegation of fault or liability.

4 34. Defendant lacks knowledge or information sufficient to form a belief about the
5 truth of the allegations alleged in this paragraph. Therefore, Plaintiff is left to his proof.
6 Defendant denies any allegation of fault or liability

7 35. This paragraph is directed to a different defendant. Therefore, Plaintiff is left to
8 his proof. Defendant denies all allegations of fault or liability.

9 36. Defendant lacks knowledge or information sufficient to form a belief about the
10 truth of the allegations alleged in this paragraph. Additionally, this paragraph appears to be
11 directed at a different defendant. Therefore, Plaintiff is left to his proof. Defendant denies any
12 allegation of fault or liability.

13 37. Defendant lacks knowledge or information sufficient to form a belief about the
14 truth of the allegations alleged in this paragraph. Additionally, this paragraph appears to be
15 directed at a different defendant. Therefore, Plaintiff is left to his proof. Defendant denies any
16 allegation of fault or liability.

17 38. Admit insofar as assertion accurately reflects the jail records, otherwise deny.
18 Defendant denies all allegations of fault or liability.

19 39. This paragraph contains factual averments to which no response is required.
20 Plaintiff is therefore left to his proof. Defendant denies all allegations of fault or liability.

21 40. Denied as to this answering Defendant.

22 41. Defendant lacks knowledge or information sufficient to form a belief about the
23 truth of the allegations alleged in this paragraph. Therefore, Plaintiff is left to his proof.
24 Defendant denies any allegation of fault or liability.

1 42. Defendant lacks the requisite knowledge to admit the allegations in this
2 paragraph. Therefore, Plaintiff is left to his proof. This Defendant denies all allegations of
3 fault or liability.

4 43. This paragraph contains factual averments to which no response is required.
5 Plaintiff is left to his proof. Defendant denies all allegations of fault or liability.

6 44. Defendant lacks knowledge or information sufficient to form a belief about the
7 truth of the allegations alleged in this paragraph. Therefore, Plaintiff is left to his proof.
8 Defendant denies any allegation of fault or liability.

9 45. Admit insofar as Plaintiff filed an inmate request on February 4, 2020, and
10 response included scheduling for sick call. Otherwise, deny. Defendant denies all allegations of
11 fault or liability.

12 46. This paragraph is directed to a different defendant. Defendant lacks the requisite
13 knowledge to admit the allegations in this paragraph. Therefore, Plaintiff is left to his proof.
14 Additionally, this paragraph contains factual averments to which no response is required.
15 Defendant denies all allegations of fault or liability.

16 47. This paragraph contains legal, factual, and medical averments to which no
17 response is required. Plaintiff is left to his proof. Additionally, this paragraph is directed to a
18 different defendant. Answering Defendant denies all allegations of fault or liability.

19 48. Admit insofar as date of receipt of medical record matches that reflected in jail
20 records, otherwise deny. This paragraph contains factual averments to which no answer is
21 required. Defendant denies all allegations of fault or liability.

22 49. This paragraph contains medical and legal averments to which no response is
23 required. Plaintiff is left to his proof. Additionally, this paragraph is also directed to a different
24 defendant and contains information that this answering Defendant lacks sufficient knowledge
25 to answer. Defendant denies all allegations of fault or liability.

1 50. This paragraph contains factual and medical averments to which no response is
2 required. To the extent response is required, deny. Defendant denies all allegations of fault or
3 liability.

4 51. This paragraph contains factual and medical averments to which no response is
5 required. Additionally, this paragraph is also directed to a different defendant and contains
6 information that this answering Defendant lacks sufficient knowledge to answer. Defendant
7 denies all allegations of fault or liability.

8 52. This paragraph contains factual allegations to which no response is required.
9 Additionally, this paragraph contains information that is outside the knowledge of this
10 answering Defendant. To the extent the asserted statement is accurately reflected in the jail
11 record, admit, otherwise, deny. Defendant denies all allegations of fault or liability.

12 53. This paragraph contains factual and medical averments to which no response is
13 required. Additionally, this paragraph is also directed to a different defendant and contains
14 information that this answering Defendant lacks sufficient knowledge to answer. Defendant
15 denies all allegations of fault or liability.

16 54. This paragraph contains medical averments to which no response is required. To
17 the extent the stated facts are consistent with the medical and jail records, admit. To the extent
18 they are not consistent, deny. Defendant denies all allegations of fault or liability.

19 55. Admit that Plaintiff was transported to the hospital by emergency personnel at one
20 point during his incarceration in Clark County Jail. Defendant denies all allegations of fault or
21 liability.

22 56. This paragraph contains medical and factual averments to which no response is
23 required. Plaintiff is left to his proof. Defendant denies all allegations of fault or liability.

24 57. This paragraph contains factual and medical averments to which no response is
25 required. Assertions that Plaintiff filed a grievance and/or visited sick call are admitted to the

1 extent they are supported by the jail record, otherwise deny. Defendant denies all allegations of
2 fault or liability.

3 58. This paragraph contains medical averments to which no response is required. This
4 answering Defendant admits the existence of the inmate request slip insofar as it is reflected in
5 the jail record, otherwise deny. Defendant denies all allegations of fault or liability.

6 59. This paragraph is directed at a different defendant, and this answering Defendant
7 lacks sufficient knowledge to answer. Defendant denies all allegations of fault or liability.

8 60. Defendant admits the existence of the alleged inmate request slip insofar as it is
9 reflected in the jail record, otherwise deny. Defendant denies all allegations of fault or liability.

10 61. This paragraph contains factual averments to which no response is required. To
11 the extent the quoted phrase is reflected in the jail record, admit. Otherwise, deny. Defendant
12 denies all allegations of fault or liability.

13 62. This paragraph contains factual averments to which no response is required.
14 Admit insofar as the date and contents of the referenced grievance, so long as they match the
15 medical record. Otherwise, deny. Defendant denies all allegations of fault or liability.

16 63. This paragraph contains factual and legal averments to which no response is
17 required. Plaintiff is left to his proof. Defendant denies all allegations of fault or liability.

18 64. This paragraph contains factual and legal averments to which no response is
19 required. Plaintiff is left to his proof. Defendant denies all allegations of fault or liability.

20 65. This paragraph contains factual and legal averments to which no response is
21 required. Plaintiff is left to his proof. Defendant denies all allegations of fault or liability.

22 66. This paragraph is directed at a different defendant and this answering Defendant
23 lacks sufficient knowledge to answer. Defendant denies all allegations of fault or liability.

24 67. This paragraph is directed at a different defendant and this answering Defendant
25 lack sufficient knowledge to answer. Defendant denies all allegations of fault or liability.

68. This paragraph contains factual averments to which no response is required. To the extent the date the grievance was filed reflects that in the jail record, admit, otherwise deny. Defendant denies all allegations of fault or liability.

69. This paragraph is argumentative and contains factual and medical averments to which no response is required. Defendant denies all allegations of fault or liability.

70. This paragraph contains factual and medical averments to which no response is required. Defendant denies all allegations of fault or liability.

71. This paragraph contains factual and medical averments to which no response is required. To extent response is required, deny. Defendant denies all allegations of fault or liability.

72. This paragraph contains factual averments to which no response is required. Additionally, this Defendant lacks the requisite knowledge to respond to the allegations in this paragraph. Defendant denies any allegation of fault or liability.

73. This paragraph is directed at a different defendant and this answering Defendant lack sufficient knowledge to answer. Defendant denies all allegations of fault or liability.

74. This paragraph contains medical, legal, and factual averments to which no response is required. Plaintiff is left to his proof. Defendant denies all allegations of fault or liability.

75. Denied.

76. Denied.

77. This paragraph is directed to a different defendant. This Defendant lacks the requisite knowledge or information to respond to the allegations in this paragraph. Therefore, they are denied, leaving Plaintiff to his proof.

FIRST CAUSE OF ACTION

Title II of the American with Disabilities Act of 1990

DEFENDANT NAPHCARE, INC. ANSWER TO
PLAINTIFF'S AMENDED COMPLAINT- 10
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42 U.S.C. § 12131 *et seq.*

(Against Defendants Clark County and Clark County Jail)

78. Defendant incorporates its answers from Paragraphs 1-77 above. All allegations against this answering Defendant are denied

79 – 90. These paragraphs contain legal and factual conclusions to which no response is required. Additionally, these paragraphs are directed to a different defendant. All allegations against this answering Defendant are denied.

SECOND CAUSE OF ACTION

Section 504 of the Rehabilitation Act of 1973

29 U.S.C. § 794

(Against All Defendants)

91. Defendant incorporates its answers from Paragraphs 1-90 above. All allegations against this answering Defendant are denied.

92. This paragraph is a legal conclusion and no response is required. To the extent a response is required, denied as directed to this answering Defendant.

93. This paragraph contains legal and medical conclusions and no response is required. To the extent a response is required, denied as directed to this answering Defendant.

94. This paragraph is a legal conclusion and no response is required. Plaintiff is left to his proof. Defendant denies all allegations of fault or liability.

95. This paragraph is a legal conclusion and no response is required. To the extent a response is required, denied as directed to this answering Defendant.

96. Denied to the extent directed to this answering Defendant.

97. Denied to the extent directed to this answering Defendant.

98. This paragraph is a legal conclusion and no response is required. To the extent a response is required, deny. Defendant denies all allegations of fault or liability.

1 99. This paragraph contains factual conclusions to which no response is required. To
2 the extent response is required, deny. Defendant denies all allegations of fault or liability.

3 100. Denied to the extent directed at this answering Defendant.

4 101. Denied to the extent directed at this answering Defendant.

5 **THIRD CAUSE OF ACTION**

6 **42 U.S.C. § 1983**

7 **(Against All Defendants)**

8 102. Defendant incorporates its answers from Paragraphs 1-101 above. All allegations
9 against this answering Defendant are denied. This paragraph contains a legal conclusion to
10 which no response is required. Defendant denies all allegations of fault or liability.

11 103. This paragraph is a legal conclusion and no response is required. To the extent a
12 response is required, deny. Defendant denies all allegations of fault or liability.

13 104. This paragraph is a legal conclusion and no response is required. To the extent a
14 response is required, deny. Defendant denies all allegations of fault or liability.

15 105. Denied as to this answering Defendant.

16 106. Denied as to this answering Defendant.

17 107. Denied as to this answering Defendant.

18 108. Denied as to this answering Defendant.

19 109. Denied as to this answering Defendant.

20 110. Denied as to this answering Defendant.

21 111. Denied as to this answering Defendant.

22 112. Denied as to this answering Defendant.

23 113. Denied as to this answering Defendant.

24 114. Denied as to this answering Defendant.

25 **FOURTH CAUSE OF ACTION**

The Washington Law Against Discrimination

R.C.W. § 49.60.010 *et seq.*

(Against All Defendants)

115. Defendant incorporates its answers from Paragraphs 1-114 above. All allegations against this answering Defendant are denied.

116. This paragraph is a legal conclusion and no response is required. To the extent a response is required, deny. Defendant denies all allegations of fault or liability.

117. This paragraph is a legal conclusion and no response is required. To the extent a response is required, deny. Defendant denies all allegations of fault or liability.

118. This paragraph is directed at a different defendant. As applied to this answering Defendant, this paragraph is a legal conclusion and no response is required, to the extent response is required, deny. Defendant denies all allegations of fault or liability.

119. This paragraph is directed at a different defendant. As applied to this answering Defendant, this paragraph is a legal conclusion and no response is required, to the extent response is required, deny. Defendant denies all allegations of fault or liability.

120. This paragraph is a legal conclusion and no response is required. To the extent a response is required, deny. Defendant denies all allegations of fault or liability.

121. Denied as to this answering Defendant.

122. Denied as to this answering Defendant.

123. Denied as to this answering Defendant.

124. Denied as to this answering Defendant.

125. Denied as to this answering Defendant.

FIFTH CAUSE OF ACTION

Negligence

(Against All Defendants)

DEFENDANT NAPHCARE, INC. ANSWER TO
PLAINTIFF'S AMENDED COMPLAINT- 13
(CASE NO. 3:20-cv-06106-RAJ)

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1 126. Defendant incorporates its answers from Paragraphs 1-125 above. All allegations
2 against this answering Defendant are denied.

3 127. This paragraph is a legal conclusion and no response is required. Plaintiff is left to
4 his proof. To the extent a response is required, deny any allegation of fault or liability.

5 128. Denied as to this answering Defendant.

6 129. Denied as to this answering Defendant.

7 130. Denied as to this answering Defendant.

8 **SIXTH CAUSE OF ACTION**

9 **Negligent Infliction of Emotional Distress**

10 **(Against All Defendants)**

11 131. Defendant incorporates its answers from Paragraphs 1-130 above. All allegations
12 against this answering Defendant are denied.

13 132. This paragraph is a legal conclusion and no response is required. To the extent a
14 response is required, deny. Defendant denies all allegations of fault or liability.

15 133. This paragraph contains legal and medical conclusions and no response is
16 required. To the extent a response is required, deny. Defendant denies all allegations of fault or
17 liability.

18 134. Denied as to this answering Defendant.

19 135. This paragraph is argumentative, therefore deny. Defendant denies all allegations
20 of fault or liability.

21 136. This paragraph contains legal and medical conclusions and no response is
22 required. To the extent a response is required, deny. Defendant denies all allegations of fault or
23 liability.

24 137. Denied as to this answering Defendant.

25 138. Denied as to this answering Defendant.

SEVENTH CAUSE OF ACTION

Outrage

(Against All Defendants)

139. Defendant incorporates its answers from Paragraphs 1-138 above. All allegations against this answering Defendant are denied.

140. Denied as to this answering Defendant.

141. Denied as to this answering Defendant.

142. Denied as to this answering Defendant.

143. This paragraph contains medical averments to which no response is required. Defendant denies all allegations of fault or liability.

144. This paragraph contains medical and factual averments to which no response is required. To the extent response is required, deny. Defendant denies all allegations of fault or liability.

145. Denied as to this answering Defendant.

146. This paragraph contains medical and factual conclusions to which no response is required. To the extent response is required, deny. Defendant denies all allegations of fault or liability.

147. Denied as to this answering Defendant.

148. This paragraph is argumentative, therefore deny. Defendant denies all allegations of fault or liability.

149. Denied as to this answering Defendant.

EIGHTH CAUSE OF ACTION

Battery

(Against Clark County and Clark County Jail)

1 150. Defendant incorporates its answers from Paragraphs 1-149 above. All allegations
2 against this answering Defendant are denied.

3 151 – 154. These paragraphs are directed to a different defendant. Additionally, these
4 paragraphs contain factual and legal conclusions to which no response is required. To the
5 extent that response is required deny. All allegations against this answering Defendant are
6 denied.

7 **NINTH CAUSE OF ACTION**

8 **Negligent Misrepresentation**

9 **(Against Clark County and Clark County Jail)**

10 155. Defendant incorporates its answers from Paragraphs 1-154 above. All allegations
11 against this answering Defendant are denied.

12 156. This paragraph contains factual and medical averments to which no response is
13 required. These paragraphs are directed to a different defendant. To the extent response is
14 required, deny.

15 157. This paragraph contains medical averments to which no response is required. This
16 paragraph is directed to a different defendant. All allegations against this answering Defendant
17 are denied.

18 158. This paragraph contain a factual conclusion to which no response is required. This
19 paragraph is directed to a different defendant. All allegations against this answering Defendant
20 are denied.

21 159. This paragraph is directed to a different defendant. All allegations against this
22 answering Defendant are denied.

23 160. This paragraph is directed to a different defendant. All allegations against this
24 answering Defendant are denied.

1 161. This paragraph is directed to a different defendant. All allegations against this
2 answering Defendant are denied.

3 162. This paragraph is directed to a different defendant. All allegations against this
4 answering Defendant are denied.

5 163. This paragraph is directed to a different defendant. All allegations against this
6 answering Defendant are denied.

7 164. This paragraph is directed to a different defendant. All allegations against this
8 answering Defendant are denied.

9 165. This paragraph contains a medical conclusion to which no response is required.
10 This paragraph is directed to a different defendant. This answering Defendant denies all
11 allegations of fault or liability.

12 166. This paragraph is directed to a different defendant. All allegations against this
13 answering Defendant are denied.

14 **TENTH CAUSE OF ACTION**

15 **Intentional Misrepresentation**

16 **(Against Clark County and Clark County Jail)**

17 167. Defendant incorporates its answers from Paragraphs 1-166 above. All allegations
18 against this answering Defendant are denied.

19 168-170. These paragraphs contain legal conclusions to which no response is required.
20 These paragraphs are directed to a different defendant. All allegations against this answering
21 Defendant are denied.

22 171. This paragraph contains medical averments to which no response is required. To
23 the extent response is required, deny.

24 172. This paragraph is directed to a different defendant. All allegations against this
25 answering Defendant are denied.

1 173. This paragraph is directed to a different defendant. All allegations against this
2 answering Defendant are denied.

3 174. This paragraph is directed to a different defendant. All allegations against this
4 answering Defendant are denied.

5 **ELEVENTH CAUSE OF ACTION**

6 **Breach of Express Warranty**

7 **R.C.W. § 7.72.030**

8 **(Against Clark County and Clark County Jail)**

9 175. Defendant incorporates its answers from Paragraphs 1-174 above. All allegations
10 against this answering Defendant are denied.

11 176. This paragraph contains legal conclusions to which no response is required. To
12 the extent response is required, deny. This paragraph is also directed at a different defendant.
13 This answering Defendant denies all allegations of fault or liability.

14 177. This paragraph contains legal conclusions to which no response is required. To
15 the extent response is required, deny. This paragraph is also directed at a different defendant.
16 This answering Defendant denies all allegations of fault or liability.

17 178. This paragraph contains legal and factual conclusions to which no response is
18 required. To the extent response is required, deny. This paragraph is also directed at a different
19 defendant. This answering Defendant denies all allegations of fault or liability.

20 179. This paragraph contains factual conclusions to which no response is required. To
21 the extent response is required, deny. This paragraph is also directed at a different defendant.
22 This answering Defendant denies all allegations of fault or liability.

23 180. This paragraph contains factual conclusions to which no response is required. To
24 the extent response is required, deny. This paragraph is also directed at a different defendant.
25 This answering Defendant denies all allegations of fault or liability.

181. This paragraph is directed at a different defendant. Denied as to this answering Defendant.

182. This paragraph is directed at a different defendant. Denied as to this answering Defendant.

TWELFTH CAUSE OF ACTION

Breach of Implied Warranty of Merchantability

R.C.W. § 62A.2-314

(Against Clark County and Clark County Jail)

183. Defendant incorporates its answers from Paragraphs 1-182 above. All allegations against this answering Defendant are denied.

184. This paragraph contains legal conclusions to which no response is required. This paragraph is also directed to a different defendant. All allegations against this answering Defendant are denied.

185. This paragraph is also directed to a different defendant. All allegations against this answering Defendant are denied.

186-187. This paragraph is directed at a different defendant. Denied as to this answering Defendant.

THIRTEENTH CAUSE OF ACTION

Breach of Implied Warranty: Fitness for a Particular Purpose

R.C.W. § 62A.2-315

(Against Clark County and Clark County Jail)

188. Defendant incorporates its answers from Paragraphs 1-187 above. All allegations against this answering Defendant are denied.

1 189. This paragraph contains legal averments to which no response is required. To the
2 extent response is required, deny. This paragraph is also directed to a different defendant. All
3 allegations against this answering Defendant are denied.

4 190-193. This paragraph is directed to a different defendant. All allegations against this
5 answering Defendant are denied.

6 **IV. PLAINTIFF'S PRAYER FOR RELIEF**

7 Plaintiff's prayer for relief does not require an answer. To the extent an answer is
8 required, Defendant denies all the allegations contained in this section of Plaintiff's complaint.
9 Defendant further denies that Plaintiff is entitled to the relief sought.

10 **V. PLAINTIFF'S JURY DEMAND**

11 Defendant also demands a trial by jury.

12 **AFFIRMATIVE DEFENSES**

13 As further answer to the Plaintiff's Complaint, and in order to preserve the right to assert
14 affirmative defenses at trial, Defendant hereby notifies the Plaintiff that he are pleading all
15 theories of defense available pursuant to law. Based on the information now available, and
16 pursuant to CR 8, 11, and 12, Defendants generally deny the Plaintiffs' allegations of negligence,
17 causation, and damages, and reserves the right to assert defenses including but not limited to the
18 following:
19

- 20 1. Failure to state one or more claims upon which relief can be granted;
21 2. Contributory negligence/comparative fault;
22 3. Pre-existing condition;
23 4. Failure to mitigate damages;
24 5. Consent and assumption of risk;
25

1 6. Defendant avers that the wrongs and damages alleged by Plaintiff were caused
2 solely by the act and/or omissions of persons and/or entities for which NaphCare is not
3 responsible;

4 7. NaphCare denies any Fourteenth Amendment due process or equal protection
5 violations;

6 8. NaphCare denies any violation of state laws;

7 9. NaphCare specifically denies any wrongful conduct which was willful, malicious,
8 in bad faith, deliberate and/or beyond its authority;

9 10. NaphCare denies the claims of civil rights violations, if any, under 42 U.S.C. §)
10 1983;

11 11. Plaintiff's claims are barred because there is no causal relationship, legal or
12 proximate, between NaphCare's actions and/or inactions and plaintiff's alleged injuries and
13 damages;

14 12. Plaintiff's claims for punitive damages are in contravention of NaphCare's rights
15 under state and federal constitutions;

16 13. No act or omission of NaphCare was malicious, willful, wanton, or reckless and,
17 therefore, any award of punitive damages is barred;

18 14. Because of the lack of clear standards, any imposition of punitive damages against
19 NaphCare would be unconstitutionally vague and/or overbroad;

20 15. Plaintiff's claims are barred by the doctrines of qualified immunity, state agent
21 immunity, and sovereign immunity;

22 16. NaphCare reserves the right to assert other defenses as discovery proceeds;

1 17. To the extent the Plaintiff is successful in proving any claims, the Defendant is
 2 liable only for its proportionate share of the total damages, if any, pursuant to RCW 4.22. To
 3 the extent that any entity or person contributed to the Plaintiffs' injuries and damages, and was
 4 at fault in doing so, the Defendant requests that liability be apportioned according to the
 5 percentage of fault of Plaintiff and any other persons, parties, or third parties, in accordance with
 6 RCW 4.22. Any verdict/judgment should be reduced pursuant to the provisions of RCW 4.22.
 7 Defendant further expressly reserves the right, in the event that the Plaintiff settles or has already
 8 settled with other persons, parties, or third parties, to seek a credit and setoff for any
 9 proportionate negligence that the jury shall attribute to the settling parties. Defendant reserves
 10 the right to read portions of depositions, call witnesses to testify at the trial, and introduce and
 11 use evidence regarding allocation of fault, even if other persons, entities, parties, or third parties
 12 settle or have already settled with the plaintiff before trial.
 13

14
 15 Defendant reserves the right to amend this Answer, and to assert additional affirmative
 16 defenses, third-party claims, counterclaims, and cross-claims as discovery in this matter is
 17 conducted, as well as the right to assert additional claims or actions against other parties, whether
 18 in this lawsuit or not as the facts develop.

19 Defendant asserts the above affirmative defenses in order to preserve the right to assert
 20 these matters at trial. Upon completion of discovery, and based upon the facts learned during
 21 discovery and investigation, Defendant may withdraw any of these affirmative defenses as may
 22 be appropriate.
 23

24 PRAYER FOR RELIEF

25 WHEREFORE, HAVING FULLY ANSWERED Plaintiff's Complaint, Defendant prays

1 that it be dismissed with prejudice and with costs or fees taxed in their favor.
2

3 DATED this 8th day of February, 2022.

4 FAIN ANDERSON VANDERHOEF
5 ROSENDAHL O'HALLORAN SPILLANE, PLLC

6 By: s/Ketia B. Wick

7 Ketia B. Wick, WSBA #27219
8 Josephine Strauss, WSBA #58283
9 Attorney for Defendant NaphCare, Inc.

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12 (206) 749-0094
13 ketia@favros.com
14
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25

CERTIFICATE OF SERVICE

I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Counsel for Plaintiff

Mary C. Varga, *Pro Hac Vice*
Stein & Vargas LLP
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mary.vargas@steinvargas.com

- ☐ Regular U.S. Mail
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- ☐ Regular U.S. Mail
☐ Facsimile
☐ ABC Legal Messenger
☒ E-mail/ ECF

Signed at Seattle, Washington this 8th day of February, 2022.

/s/Alisha Chand

Alisha Chand

Legal Assistant to Ketia B. Wick